

# California's Workers' Compensation System In Crisis



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## **Executive Summary**

California's workers' compensation system is in crisis. Business owners in our state are paying the highest workers' compensation insurance premiums in the nation and the result is the loss of jobs, lower wages and fewer disability, health, and retirement benefits for hard-working Californians. This job-killing machine results in reduced tax revenues received by state and local governments, the loss of public sector jobs, and a reduction in

essential services such as public safety, health care, education, libraries, and parks.<sup>1</sup>

The Call for Reform. In response to this challenge, Assembly and Senate Republican legislators have introduced over 20 major reform bills that would protect California jobs by eliminating or significantly reducing the key cost-drivers in the workers' compensation system. Assembly and Senate Republicans have, with the introduction of these major reform bills, given Assembly and Senate Democrats an opportunity to support comprehensive workers' compensation reform.

Additionally, on April 3<sup>rd</sup>, the Joint Republican Caucus wrote a letter to Governor Davis and requested that he use his authority to call a special session of the Legislature to address the growing workers' compensation crisis. It's time to get serious about enacting comprehensive reform.

A Challenge to Democrats. Will Democrat leaders step up to the challenge, pursue real reform, and eliminate the job killing effects of our broken workers' compensation system? Are they willing to say "no" to special interest groups – "the middlemen" -, which feed off a workers' compensation system that was originally designed to help injured workers and employers? Will they be able to enact comprehensive reform when a benefit increase is not on the table?

Assembly Democrats have responded by passing AB 227 (Vargas), a spot bill to provide for an interim outpatient surgery fee schedule and AB 1578 (Vargas), a spot bill that would raise the maximum fine for fraud committed by employers. These bills are intended to be "vehicles for workers' compensation reform" and could be substantially amended in the Senate. They have also passed three Republican authored bills, AB 1483 (Richman), to train and certify physicians, AB 1579 (Cogdill), to ban physician self-referral for outpatient surgeries, and AB 1580 (Cogdill), to prohibit inmates in local correctional facilities from collecting certain workers' compensation benefits.

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<sup>1</sup> According to the League of California Cities and the CA State Association of Counties a 1% increase in workers' compensation costs would result in a \$9 million impact on cities and counties. By comparison, \$9 million would provide sufficient funding for: one year of operation for 35 community libraries (20 hours a week), 120 deputy sheriffs or police officers, or 129 firefighters, or maintenance for 1125 one-acre community parks, or 27,273 ambulance transports from an emergency incident to a hospital, or 60,000 2-hour visits by social workers to foster children in group homes, or 750,000 days of care for dogs in animal shelters.

Senate Democrats have taken an uncertain approach to reforming the workers' compensation system. While SB 228 (Alarcon), to require the Official Medical Fee Schedule (OMFS) to be based on a percentage of Medicare charges, and SB 354 (Speier), to control chiropractic utilization, may have some positive aspects, Senate President Pro Tem John Burton has said that approval of workers' compensation changes sought by businesses are contingent on the willingness of employers to offer their employees health coverage.<sup>2</sup> The California Chamber of Commerce has estimated that this new employer mandate could exceed \$10 billion a year. The Senate Democrat approach, at this point, appears to be that they will a little more money into a business owner's right pocket while taking a lot more out of the left pocket.

It also appears that Senate Democrats are exploring reinstituting insurance rate regulation by the Insurance Commissioner. SB 191 (Alarcon) would require an insurer that desires to use any rates lower than the pure premium rate to obtain the approval of the Insurance Commissioner. This bill would make it more difficult to lower insurance premiums paid for by employers.

It is unclear at this moment whether Governor Davis and the Democrat legislative leadership can muster the political courage to save California jobs and protect essential government services by enacting comprehensive reform of our state's broken workers' compensation system.

### **The Historic Bargain Crumbles**

In 1913, the California Legislature enacted the Boynton Act, which established a compulsory no-fault workers' compensation system and created the State Compensation Insurance Fund ("the State Fund"), a nonprofit enterprise with a public purpose, to guarantee the availability of coverage for employers. The Legislature intended that the "historic bargain" between business and labor would result in the expeditious provision of all necessary medical treatment and disability payments to injured workers and a quick return-to-the job site, while employers would be relieved of the expense and uncertainty of tort liability.

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<sup>2</sup> SB 229 (Burton) would prohibit the State Fund from raising premium rates for small employers who provide health insurance to their employees. It is not clear on policy grounds why a high-wage small employer, who can afford to provide health insurance to his or her employees, should be charged less for workers' compensation insurance from the State Fund than another small employer who cannot afford to provide health insurance benefits.

Ninety years later, an antiquated California's workers' compensation system, burdened by *ad hoc* changes in the law, has become unresponsive to the needs of business owners and honest and hard-working Californians who are hurt on the job. Employers are paying the highest workers' compensation insurance premiums in the nation because of skyrocketing medical claim costs, the subjective nature of determining the extent of an injured worker's permanent disability, embedded litigation, and widespread fraud.

Employers are experiencing great difficulty in finding workers' compensation insurance due to the collapse of the private insurance market and recent statements by State Fund officials that they will not accept new business clients which would jeopardize the solvency of the fund.

Meanwhile, honest and hard working Californians who are injured on the job receive some of the lowest disability benefits in the nation and often feel compelled to hire an applicant attorney to negotiate a higher level of permanent disability benefits and eligibility for vocational rehabilitation benefits. No one wins under California's so-called "no-fault" workers' compensation system.

Reform Efforts Come Up Short. In 1989, 1993, and 2002, the California Legislature enacted large benefit increases and made a number of changes in workers' compensation law. The legislative dynamic, driven by organized labor, has been the enactment of higher benefits for injured workers in exchange for some workers' compensation reform. However, unlike the reform effort in 1993<sup>3</sup>, in 2002, with the enactment of AB 749 (Calderon), Republican legislators and representatives of business owners were shut out of the process. In February 2002, the Democrat leadership passed the 95-page AB 749 through the process in a manner of days and little consideration was given to including cost-saving reforms.<sup>4</sup>

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<sup>3</sup> The 1993 reforms included repealing the minimum rate law, effective January 1, 1995, placed a \$16,000 cap on vocation rehabilitation payments; limited medical-legal reports; established the Industrial Medical Council (IMC); qualifications for QMEs; prohibits self-referrals by physicians and QMEs; extended employer control of medical care in a health care organization (HCO); revise OMFS to include hospitals, drugs and pharmacy services; carve-outs for construction firms and unions; created insurer loss control programs and the Targeted Inspection Program; and 24-hour care pilot program.

<sup>4</sup> The 2002 reforms included a date certain for the pharmaceutical fee schedule; encouraging the dispensing of generic drugs; permitting employers to use pharmacy networks; allowing employers to offer one HCO, the partial repeal of the Treating Physician Presumption; and the elimination of "baseball arbitration."

The main problem with past legislative efforts has been that the enactment of broad-based benefit increases has not been adequately matched by systemic reform of the major cost-drivers in the system. In the end, self-insured and insured employers are paying crushing workers' compensation bills, are moving out of California, not expanding jobs in the state, laying off employees, cutting employee benefits and wages.

### **The Highest Workers' Compensation Premiums**

According to an annual survey conducted by the Oregon Department of Consumer and Business Services, workers' compensation premium rates in California have leapfrogged upward since 1994 to be the highest in the nation. The average California employer paid \$5.23 per \$100 payroll in 2002. Our neighbors and competitors are doing better. Nevada ranked 10<sup>th</sup> with a rating of \$3.02, while Oregon ranked 35<sup>th</sup> with \$2.06 and Arizona ranked 46<sup>th</sup> with \$1.63 per \$100 of payroll. California ranked 15<sup>th</sup> in 1994, 13<sup>th</sup> in 1996, first in 1998, and third in 2000.

It does not look like any other state is going to challenge California for the dubious distinction of having the highest workers' compensation premiums in the nation. The Department of Insurance is now estimating that employers, on average, in California are paying about \$6.50 per \$100 in payroll. Insurance Commissioner Garamendi told legislators in Assembly Insurance Committee on April 30, that this figure could exceed \$7 per \$100 in payroll next year. There seems to be no end in sight for skyrocketing workers' compensation cost increases.

Due to worsening claims cost trends, the California Workers' Compensation Insurance Rating Bureau (WCIRB) asked in April that the state to increase the pure premium rate by another 10.6% by July 1. The average cost of a claim shot up to \$52,000 from \$45,000 in 2001. This is the fourth recommended rate hike in the last two years. Insurers are permitted to charge rates below or above the pure premium rate established by the Insurance Commissioner.

AB 749 Made Things Worse. The cost trend was accelerated when the Legislature passed AB 749 (Calderon) in February 2002. David Bellusci, chief actuary for the Workers' Compensation Insurance Rating Bureau (WCIRB) estimated that this bill could raise costs by approximately \$2.4 billion (without increased utilization) or by as much as \$3.5 billion (with

increases in utilization) through 2006. The latter figure would result in additional 23% premium increase for employers.

### **The Private Insurance Market Collapses**

With the implementation of SB 30 (Johnson) and open rating in January 1, 1995, workers' compensation insurance premiums dropped dramatically and a number of carriers went insolvent as premium and investment income did not keep up with increasing claims costs.<sup>5</sup>

Since 2000, at least 25 private workers' compensation insurers have become insolvent, which has forced the California Insurance Guarantee Association (CIGA) to assume huge claim paying obligations while more and more employers seek coverage from the State Fund. In California's dysfunctional workers' compensation insurance market, CIGA and State Fund are the dominant claim-paying entities. But concerns have been raised about the financial stability of both CIGA and the State Fund.<sup>6</sup>

A Bailout for CIGA. On May 16, Insurance Commissioner Garamendi authorized an emergency bailout of CIGA. CIGA requested and received the commissioner's permission to dip into funds earmarked to cover unpaid claims for automobile and homeowner policies to pay workers' compensation claims for approximately 40,000 injured workers. In 2001, the Legislature enacted AB 1183 (Calderon) to increase the maximum surcharge on insurance premiums from 1% to 2% for CIGA to make payments to injured workers previously covered by insolvent insurers. CIGA is projected to raise about \$300 million from the increased surcharge but that won't be enough to pay rapidly rising workers' compensation costs. CIGA is paying \$1.6 million a day in benefits to injured workers.

Legislators may be asked this session to consider another bill that would authorizing CIGA to once again raise the 2% maximum surcharge and/or granting CIGA permission to float a \$500 million revenue bond. Ultimately, employers pay for the surcharges tacked on insurance premiums. This is

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<sup>5</sup> The most useful provision of AB 1985 (Calderon), Statutes of 2002, was the requirement that workers' compensation insurers comply with Risk-Based Capital requirements. This may give the Insurance Commissioner an early-warning system to spot insurers that are getting into financial trouble.

<sup>6</sup> Last year, Governor Davis also had a hand in weakening the State Fund by ordering a hiring freeze despite the fact that the fund does not receive a dime of general or special fund money. The hiring freeze was eventually lifted.

essentially another tax on employers to pay for the waste, inefficiency, and fraud inherent in the workers' compensation system.

### **The State Fund's Uncertain Mission**

For the last 90 years, the State Fund has provided coverage to 20-30% of the insured market. The State Fund's market share has typically increased during difficult economic times such as the Great Depression.

Due to the collapse of the private insurance market, starting in the late 1990s, the State Fund's market share is now about 50% of the insured market. Many have argued that because state law requires each business to either obtain a certificate of self-insurance or purchase workers' compensation insurance, that the mission of the State Fund is to act as the "*insurer of last resort*." The Board of Directors of the State Fund disagrees and this has created a major dispute with the Insurance Commissioner over the mission of the State Fund.

State Fund v. Garamendi. State Fund President Dianne Oki bluntly and publicly disagreed with Insurance Commissioner Garamendi during a March 19 information hearing of the Assembly Insurance regarding the mission of the State Fund. Oki said that the State Fund would refuse to insure some businesses even if they are unable to find coverage in the private market. Oki said since its inception in 1914 that State Fund has always acted as a last-resort insurer but it can no longer afford to with so few private insurers in the market. With claim costs rising rapidly the remaining insurers are cherry-picking the lowest-risk businesses and leaving the rest to State Fund. The State Fund notes that current law states that the State Fund may decline to cover business "*which is beyond the safe carrying of the fund*" and that "*adverse selection*" can result in insolvency.

During the March 19<sup>th</sup> hearing, Garamendi insisted that no business will be forced to close down because it can't find workers' compensation insurance. Several Assembly Republicans questioned whether it was wise for the State Fund to suddenly close the door to employers seeking workers' compensation insurance.

On April 2, Insurance Commissioner Garamendi tried to shrink State Fund's market share but requiring the fund to implement a rule that would require that employers get three declinations from private insurers before going to

the State Fund. Because of the lack of private insurer alternatives, Garamendi disbanded the three-declination rule only three weeks later on April 23<sup>rd</sup>.

The Legislature has not yet directly confronted question of the appropriate mission of the State Fund. The issue has only been addressed in an indirect manner through an effort to change the composition of the fund's Board of Directors.<sup>7</sup> Insurance Garamendi has sponsored AB 1357 (Matthews), which would require that two of the five appointed members of the Board of Directors of the State Fund not be policyholders, employees, or members of policyholders. The main problem with the bill is that it could result in persons with no insurance or management experience, but who have political connections to the Governor, could be appointed to the fund's Board of Directors.<sup>8</sup>

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<sup>7</sup> It should be noted that the Legislature has already potentially corrupted the operation of the State Fund and weakened oversight of this important entity. AB 749 (Calderon), Statutes of 2002, added the Assembly Speaker and Senate Pro Tempore, or their designees, as ex officio, nonvoting members of the board. These legislators and their designees now have access to the marketing strategy and financial information of State Fund while dealing, at the same time, with competing private workers' compensation insurers in the legislative process. A major conflict of interest could occur if legislators, at the behest of legislative leadership run bills to weaken the State Fund. Additionally, the Chairs of the Assembly Insurance Committee and Senate IR Committee are less likely to provide real oversight of State Fund when their bosses, the Assembly Speaker and Senate Pro Tempore are sitting on the board.

<sup>8</sup> After Joe Lang, a lobbyist for the State Fund, testified against this AB 1357, Insurance Commissioner Garamendi ordered State Fund to fire him.



## Medical Cost Containment Reforms

Rising medical costs is one of the primary cost drivers in the workers' compensation system, tripling in a decade from \$8,780 per medical claim in 1991 to \$24,235 by 2001.<sup>9</sup> Medical costs in our state's workers' compensation system are estimated to be 50-100% higher than in group health.<sup>10</sup> And where the Official Medical Fee Schedule (OMFS) does not yet apply, costs are rising even faster. According to a 2001 study by the California Commission on Health and Safety and Workers' Compensation (CHSWC), California employers are paying outpatient surgery fees that are 230% what Medicare pays for hospital outpatient surgery fees and 370% what Medicare pays for free standing outpatient surgical facilities.<sup>11</sup>

Reform efforts have focused on ensuring that the OMFS is comprehensive in nature and includes such services as outpatient surgery fees. The OMFS should also be crafted on a rational basis such as the Medicare's fee, which is update every year. There is also a need to close the scandalous practice that allows physicians who own outpatient surgery centers to refer their patients to these same facilities.

Excessive utilization of medical services is an acute problem in California's workers' compensation system and can be controlled by setting certain utilization limits, tracking utilization patterns, and giving employers an opportunity to use PPO networks to provide medical care to insured workers. Below are some of the key reform ideas and corresponding bills.

***A Comprehensive Official Medical Fee Schedule (OMFS).*** Require the Administrative Director (AD) to revise the Official Medical Fee Schedule (OMFS) by a date certain to include an outpatient surgery facility fee, physician-dispensed drugs, ambulance services, home health care services,

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<sup>9</sup> "Workers' Comp Costs Must Be Addressed," Sacramento BEE, May 8, 2003.

<sup>10</sup> SB 228 bill analysis, Senate Labor & IR Committee, April 9, 2003.

<sup>11</sup> An Outpatient Surgery Fee Scandal. The article "Surgery Centers Hire a Friend: Former Assemblyman Made Sure Their Fees Wouldn't Be Capped," by Greg Lucas, appeared in the SF Chronicle on April 17, 2003. Excerpt: "A former state lawmaker whose bill last year helped outpatient surgery centers continue to charge unlimited fees for treating injured workers now works as a consultant for a chain of clinics in that industry...Surgery Centers spent at least \$2.2 million on lobbying and campaign contributions to legislative leaders, the state Democratic Party, Gov. Gray Davis and other officials in 2002.. Calderon received nearly \$100,000 in 2001 and 2002...Less than a month after being termed out of the Legislature, Calderon listed Pacific Hospital, an operator of eight surgery centers, as one of his consulting firm's clients...Workers' Compensation Insurance Rating Bureau data predicts that in 2004 surgery centers will represent about \$1.8 billion of the \$3 billion in hospital costs within the workers' compensation system. Surgery centers and their lobbyists prefer to use 2001 data that say their costs were closer to \$530 million."

and durable medical equipment. *AB 595 (Dutton), AB 596 (Dutton), AB 597 (Dutton), AB 1482 (Richman), SB 757 (Poochigian).*

Ensure that in the event that a service is not covered by the OMFS, that reasonable fees are determined based on the recent *Kunz* decision. *AB 1482 (Richman).*

***Base the OMFS on the Medicare Fee Schedule.*** Require the AD to use as a baseline fee amount the Medicare Resource-Based Relative Value Scale (RBRVS) multiplied by 1.15. The AD may annually revise the multiplier of the RBRVS baseline fee as specified. *AB 1482 (Richman).* Base the OMFS on Medicare and use an interim fee schedule that would prohibit charges to exceed 120% of Medicare fees and with regard to pharmacy, 100% of Medical fees. *SB 228 (Alarcon).*

***Track Utilization and Quality of Care Patterns:*** Require the AD to contract with a university or policy institute to develop physician utilization management, billing, quality of care, and outcome measurement data to encourage best medical practices and discourage unnecessary variance in treatment patterns. *AB 1483 (Richman).*

***Limit Chiropractic Visits.*** Provide that an insured employer is not required to provide, and is not liable for, more than 15 one-hour visits to a chiropractor without physician approval. *SB 354 (Speier).*

***Prohibit Physician Self-Referral For Outpatient Surgery.*** Prohibit doctors from self-referring their workers' comp patients to surgery centers they own or partially own. *AB 1579 (Cogdill), SB 354 (Speier), SB 899 (Poochigain).*

***Establish a PPO Network for Workers' Compensation.*** Allow self-insured employers, groups of self-insured employers, or insurers of an employer to contract with a preferred provider organization (PPO) for health care services for injured employees. *AB 1480 (Richman).*

## **Permanent Disability and Litigation Reform**

Insurance Commissioner John Garamendi was right when he recently stated that “*only a complete restructuring of this complicated, litigious, fraud infested, grossly inefficient and ineffective system*” can do the job of bring down workers’ compensation costs. A major first step in the “*complete*

*restructuring*” must be to provide a more predictable and objective way to measure the extent of an injured worker’s permanent disability.

California’s permanent disability system is out of control. Nearly 50% of all workers’ compensation indemnity claims result in some level of permanent disability as compared to the next worst state at 25%. California’s system of determining permanent disability is so subjective and unpredictable that it is virtually impossible for employers, employees, and insurers to rely on any rating. The result is that California has the most litigious workers’ compensation system in the country.

Physicians have an important role to play in determining disability ratings. Inexperience or incompetence in these areas is extremely costly to the system, and employers and employees alike pay for it. On February 14<sup>th</sup>, 2001, members of the Assembly Insurance Committee heard testimony from the Commission on Health & Safety & Workers’ Compensation that 75% of the reports written by treating physicians, who are not QMEs, are either unratable or ratable with qualifications. Only 25% of these evaluations are ratable. On the flip side, 67% to 84% of the medical-legal reports from better trained QMEs and AMEs respectively are ratable. Unratable reports cause unnecessary delay in benefits for workers and litigation. Diagnosing and treating occupational injuries and evaluating injured workers and their eligibility for work restrictions and for benefits is not something that is taught in medical school. This shows that more rigorous training works to the benefit of all.

Reform efforts have focused on requiring the use of objective standards for determining permanent disability,

***Objective Permanent Disability Ratings.*** Require that all evaluations and reports prepared by a physician with regard to the degree of permanent whole body impairment that an employee has sustained be based on demonstrable medical evidence and established medical guidelines. *AB 1481 (Richman), SB 414 (McClintock), SB 893 (Poochigian).*

***Train and Certify Physicians.*** Require every physician who treat and evaluates injured workers, on or after January 1, 2006, to be certified by the IMC as a Qualified Workers’ Compensation Physician (QWCP). Allow the IMC to waive certification requirement according to physician-to-patient access standards. Help ensure that physicians who treat and evaluate injured

workers understand the medical-legal aspects of the workers' compensation system and demonstrate competence in key areas including: diagnosis and treatment of occupational injuries, use of treatment guidelines, and accurate and complete report writing. *AB 1483 (Richman)*.

***Expand Current Alternative Workers' Compensation (AWC) program to all Industries.*** Allow any industry, not just construction firms, to negotiate with a union to create an alternative workers' compensation program consisting of an agreed list of providers and an alternative dispute resolution process instead of lengthy, formal hearing before the Workers' Compensation Appeals Board. *AB 1434 (Wyland)*.

***Annual Training of Disability Unit Evaluators (DEU) Raters:*** Require the AD to establish a mandatory annual training program for person who work in the Disability Evaluation Unit within the Department of Industrial Relations. *AB 1483 (Richman)*.

### **Compensating On-the-Job Injuries**

It is important that only job-related injuries be compensated through the employer-paid workers' compensation system. The workers' compensation system provides free medical care, temporary, permanent disability and death payments, and vocational rehabilitation benefits. It is much more expensive to treat an injury or disease in the workers' compensation system than through a group health policy. Below are several reform proposals introduced on this subject.

***Predominant Cause for Compensation.*** Require compensability for workers' compensation benefits where employment is the predominant cause of the injury as compared to all other causes combined and where the injury is not caused by the commission of a criminal act. *SB 365 (Johnson)*, *SB 757 (Poochigian)*.

***Liberal Construction of Benefit Determinations.*** Require that workers' compensation laws be liberally construed only after it is determined that an injury in the course of employment has occurred and the injury is both a "specific" injury, as defined, and results in serious physical or bodily harm. *AB 431 (Moutjoy)*.

***Cumulative Injuries.*** Require that for a cumulative injury to be compensable, an employee is required to demonstrate by a preponderance of

the evidence that the injury was substantially caused by actual activities of employment. Also, require that the work-related injury must be at least 50% of the cause of injury in order to be compensable. *AB 431 (Moutjoy)*.

***Injury Apportionment.*** Prohibit the accumulation of all PD awards issued to one individual from exceeding 100% unless the employee's injury has contributed at least 10% to the cause of the death or disability when compared to all causes of injury in total. *AB 1481 (Richman)*.

Provide that in denying apportionment of injury, the appeals board may not, in determining permanent disability (PD), rely on any medical report that fails to fully address the issue of apportionment and fails to set forth the basis for the medical opinion, on any medical report that fails to apportion a previous injury or illness that has been the subject of a prior claim for damages, or on any medical report that fails to provide a discussion of the medical processes by which a previously asserted injury or illness resolved without affecting bodily function. *AB 1481 (Richman), SB 714 (Battin)*.

Provide that if an applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. *AB 1481 (Richman), SB 714 (Battin)*.

***Psychiatric work-related injuries:*** Require proof by clear and convincing evidence to establish a psychiatric injury. *SB 366 (Johnson)*.

## **Protecting Public Safety**

AB 749 provided that inmates would be eligible for temporary disability payments of \$126 a week. Since the passage of AB 749 there has been a rash of "slips" and "falls" by inmates. This kind of fraud is costly to taxpayers and detrimental to the ability of law enforcement to carry out their duties.

***Repeal Inmate Comp Benefits.*** Repeal the ability of an inmate to receive workers' compensation benefits for an injury related to assigned employment while incarcerated. *AB 1580 (Cogdill) and SB 731 (Brulte)*.

## **Other Reforms**

Eliminating the \$10,000 vocational rehabilitation settlement and Section 5814 penalties are good examples of reforms that could reduce the unnecessary amount of money that is taken out of the workers' compensation system by applicant attorneys.

***Vocational rehabilitation.*** Provide vocational rehabilitation to be voluntary and eliminate the ability to cash-out the vocational rehabilitation benefit for \$10,000. *SB 758 (Poochigian).*

***Restructure Administrative Penalties.*** Changes the Section 5814 penalty on the entire amount to a to a 25 percent penalty for the portion of the award that was unreasonably delayed, with limits. *AB 1480 (Richman), SB 457 (McPherson), SB 759 (Poochigian).*

***Training of Insurance Claims Administrators:*** Mandatory training on the medical coordination of workers' compensation claims, permanent disability guidelines, the medical-legal aspects of the workers' compensation system, and other key roles they have in California's workers' compensation system.

## **The Davis/Garamendi Plan**

Governor Davis and Insurance Commissioner Garamendi recently issued a series of recommended reforms. Even some of the ideas have been formulated by Republicans, such as creating a fee schedule for outpatient surgeries (AB 1482 Richman) and expanding on the carve-out program (AB 1434 Wyland), Davis and Garmendi only mentioned Democrat bills in their press release. Below is a description of their proposals.

### **1. Set Outpatient Surgery Fee Schedule, Strengthen Prompt Pay, and Require Insurer to Accept/Reject WC Claim in 45 Days (SB 228-Alarcon)**

- Require a fee schedule for currently unregulated outpatient surgery centers, one of the major cost drivers in the WC system.
- Limit what can be charged under all of the various fee schedules (e.g., doctor, drugs).
- Strengthen prompt payment law to 30-day limit with a 15 percent penalty for late payment.
- Reduce the time the employer-insurer has to investigate a WC claim and accept or deny liability from current 90 days to 45 days.

**2. Expand Use of Managed Care and Create Independent Medical Review (SB 354-Speier)**

- Make independent medical review process an option for injured workers.
- Create a pilot program to permit employers to use the same HMO for general health care as they do for WC injuries.
- Eliminate current requirement that HMOs accept capitation instead of fee-for-service for WC medical claims.
- Prohibit a doctor from referring a patient to an outpatient surgery center where he/she has a financial interest.
- Enhance fines for false or fraudulent statements in connection with obtaining or reducing WC premium or costs.

**3. Adopt Major Reforms for WC Insurers**

- Require the listing of insurance carriers and their rates on the Internet.
- Expand the posting of insurer audit results and include enforcement data.

**4. Crackdown on Fraud – (AB 1099-Negrete-McLeod) and (AB 1215-Vargas)**

- Allow collaboration between Administration and Department of Insurance regarding WC fraud.
- Authorize a WC insurer to have access to quarterly wage and withholding reports filed with EDD if the information is used for the sole purpose of detecting WC insurance fraud on the part of employers.

**5. Increase Penalties for Worst Offenders Who Fail to Pay Employee Claims and Reduce Employer Penalties for Minor Delays**

- Establish an “unfair payment pattern” provision in the law that would impose strict penalties for repeat offenders.
- Reduce penalties for minor violations to 30 percent or \$1,000 (whichever is greater) of only the disputed charge (not the entire claim).

**6. Encourage Use of Generic Drugs**

- Require greater use of generic drugs beyond pharmacies to other providers in the WC system.

**7. Certify Medical Bill Review Companies and Claims Adjusters**

- Develop appropriate standards for WC medical bill review and requiring company certification based on those standards.

#### **8. Expand Carve Outs with Alternative Dispute Resolution (ADR) to Other Unionized Industries**

- Expand carve out programs in statute for employers and unions who agree to ADR (under carve outs, labor unions and employers partner to create an ADR system that does not require the use of the WCAB process).

#### **9. Make Credits Transferable for Employers Who Help Employees Return to Work (RTW)**

- Allow the injured worker, not accepted for RTW by the employer where the injury occurred, to transfer the AB 749 RTW reimbursements to a new employer.
- Current law (beginning 7/1/04) already allows an employer who has an employee with a WC injury to be reimbursed for disability benefits, workplace modifications, and premium costs if the worker is returned back to work.

#### **10. Involve Physicians Earlier in the Claims Process**

- Involve physicians in the evaluation for return to work before the employee's status goes from Temporary disability to Permanent disability.
- Require a treating physician to provide a detailed description of functional work abilities and any work restrictions, earlier in the process to more effectively return employees to work.

#### **11. Promote Small Business Participation in WC Medical Cost Savings – (AB 606-Liu)**

- There are four employer representatives on the Commission on Health and Safety and Workers' Compensation. This bill would require that at least one of the four appointments be a representative of small business.

Consultant: Kevin Hanley  
916-319-3923